* T H E H O N ' B L E S R I J U

+ W.P.No. 16810 of 2006

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B . M u r a l i s / o . l a t e E
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$ The Commissioner,
Municipal Corporationof Hyderabad, Hyderabad,A.P.
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R e s p o n d e n t

< G I S T :

> H E A D N O T E :

! C o u n s e l Sri P. Pandu Ranga Rao for Petitioner

^ C o u n s e l f o r r e s p o n d

? C A S E S R E F E R R E D : -

[1] 2000 (4) ALD 126 (DB)
[1] 2001 (3) ALD 600

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16810 of 2006

Dated:22-08-2006

Between:
B.Murali Petitioner

And

The Commissioner, MCH, Hyderabad. Respondent

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16810 of 2006

ORDER:

1. Heard both the counsel.
2. This Court on 11.8.2006 made the following order:

> *"Notice before admission. Sri Ganta Rama Rao takes notice and requests time to file counter affidavit. It is stated that on 5.6.2006 while resubmitting proposal with clarification of the legal position, 2000 (4) ALD 126 had been specifically referred to and it was also stated that no objection certificate from the collector is not required. It is also brought to the notice of this court that the Assistant City Planner, Circle-III Sri Bikshapathi on 17-*

05-2006 stated that " That you have not submitted the NOC from Joint Collector, Hyderabad District, but whereas you have submitted Andhra Law Times Report. Hence, permission applied for is hereby refused duly requesting to submit the NOC from District Collector, Hyderabad District, so as to take further necessary action".

Prima facie, this Court is of the opinion that when the judgment of the Court is duly brought to the notice of the authority, the concerned authority is bound to obey the ratio laid down in such judgment and such orders cannot be made. Hence, the Assistant City Planner, Circle-III, Sri Bikshapathi to be present before this court on 22.08.2006. Post on 22.08.2006."

3. Sri Bikshapathi, the Assistant City Planner, Circle-III is present before this court and offers unconditional apology for the bonafide mistake committed by him being under the impression that the decision is not applicable to the present case. The same is hereby recorded.

4. The writ petition is filed for a writ of Mandamus declaring the insistence of the respondent to produce " No Objection Certificate" from the District Collector, Hyderabad as illegal, arbitrary and highhanded and to direct the respondent to deal with petitioner's building application form dated 3.5.2006 filed with Circle No.III for grant of construction of building on premises bearing MCH No.1-6-249/1/1 (old No.180) Gutta, Mega City No.1730, admeasuring 340 square yards equivalent to 284.27 square metres (51.6" x 59.6') situated at Gutta Zamistanpur, Hyderabad, A.P. bounded by:

North : House of Sri R.Sattaiah & Late Sri R.Narsingh Rao
South : Part of House
East : 25' wide Road
West : 18' wide Road

without insisting upon "No Objection Certificate" from District Collector, Hyderabad and pass such other suitable orders.

5. It is stated that the petitioner purchased the property bearing

MCH No.1-6-249/1/1, (old No.180), Gutta Mega City No.1730, admeasuring 340 square yards equivalent to 284.27 square metres (51.6" X 59.6') at Gutta Zamistanpur,Hyderabad.A.P. bounded by:

North : House of Sri R.Sattaiah & Late Sri R.Narsing Rao
South : Part of House
East : 25'wide Road
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6. It is also stated that under the sale deed dated 20-03-2006 bearing No.1014/2006, registered with the Sub-Registrar, Chikkadpally, Hyderabad. It is further stated that originally the petition property belonged to one Syed Shabuddin s/o.late Syed Yaqoob who sold the same under a registered sale deed to R.Venkat Swamy on 7-6-1961. After the death of R.Venkat Swamy, his widow being his sole surviving heir sold the same to Smt.M. Sujata and five others by registered sale deed dated 12-9-1997. On 2.11.2001. Smt. Sujatha and five others sold the same to Smt.Nagam Bala Tripura Sundari. It is also stated that the petitioner purchased the property from Smt. Nagam Bala Tripura Sundri by virtue of registered sale deed dated 20-03-2006 . It is further stated that the said Nagam Bala Tripura Sundri delivered the possession and the petitioner is in possession of the property. Thus, his predecessor-in-title since 1961 had been in continuous uninterrupted possession and enjoying the property situated at Gutta Zamistanpur,Hyderabad. The Xerox copies of relevant documents are also produced before this court. It is also stated that the petitioner after purchasing the property, had duly applied to MCH for building permission vide building application form dated 3.5.2006 along with the plan of the proposed construction which he intends to carry on after the grant of MCH sanction in his favour. The Xerox copy of the said application and Xerox copy of the plan also placed before this court. It is further stated that the respondent corporation vide its letter dated 17.5.2006 bearing Lr.No.249/6/1/2006 had refused permission to him on the ground that "No Objection Certificate" from the District Collector, Hyderabad was

not filed. It is also stated that the fee towards grant of permission was paid under Challan No.3309 dated 4.5.2006 . The Xerox copies of the relevant documents are also produced. After the receipt of the said referred letter from MCH dated 17-5-2006, the petitioner again submitted a representation dated 5-6-2006 wherein the petitioner brought to the notice of respondent- MCH that as per the judgment of this court in **District Collector, Hyderabad and another Vs. N. Krishna Mohan & others**[1], 'No Objection Certificate' from the District Collector is not required to be produced for obtaining construction permission and requested the MCH to grant permission without insisting upon the 'No Objection Certificate'. It is also stated that in the said representation the petitioner quoted the relevant portion of the judgment reported in **District Collector, Hyderabad and another Vs. N. Krishna Mohan & others (1 supra)** . It is stated that MCH had not taken any action on the petitioner's application and representation and in such circumstances, raising several grounds the writ petitioner approached this court for appropriate reliefs.

7. The learned standing counsel in all fairness would submit that it is true that in the light of the decisions of this court in **District Collector, Hyderabad and another Vs. N. Krishna Mohan & others (1 supra)** and in **Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another**[2], 'no objection certificate' from the District Collector or the Revenue Authorities cannot be insisted upon. The Assistant City Planner ,Municipal Corporation of Hyderabad, T.P.Section Circle-III, Hyderabad by Letter No.249/6/1/2006/1/1 dated 17-05-2006 while addressing the writ petitioner observed as hereunder:

" Sir,

Sub:- MCH-TPS-Cir.III-Prop. Construction of Ground floor onlyin r/o.Pr.N . 1-6-249/1/1 at Zamistanpur, Hyderabad-refused-Intimation-Reg.

Ref:- Yr. Bldg. application dt. 4/5/2006.

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The building application seeking permission for proposed construction of Ground floor only in r/o. premises No.1-6-249/1/1 situated at Zamistanpur,Hyderabad submited by you in ref. cited has been refused on following grounds:-

a) That you have not submited the NOC from Joint Collector, Hyderabad District, but whereas you have submitted Andhra Law Times Report.

Hence permission applied for is hereby refused duly requesting to submit the NOC from District Collector Hyderabad District., so as to take further necessary action.

Yours faithfully,
Sd/-
17-05-2006

Asst. City Planner, Cir.III"

8. From this letter it is clear that the concerned Assistant City Planner who is present before this court today had knowledge about the decision produced before him since the same was referred to, to the effect that the writ petitioner had submitted Andhra Law Times Report.

9. The concerned Assistant City Planner explained before this court that a bonafide mistake was committed by him, inasmuch he was under the impression that the said decision is not applicable to the present case.

10. Whenever Judgments of courts law in general and the decisions of this court as court of record or of the Apex Court which are binding on the authorities are brought to the notice of the authorities, they are expected to act with due care and caution before making an order. It is needless to say that in the event of entertaining a doubt in relation to the applicability of a particular decision to the facts on hand, it would be appropriate for the concerned authority to consult and take advise of the concerned standing counsel, the concerned

Government Pleader or the learned Advocate General as the case may be especially to avoid the risk of contempt of court which may eventually flow out of such reckless, negligent, deliberate or willful violations as the case may be. It is unfortunate that this court in the recent past came across several such orders being passed despite the fact that the binding precedents though are being brought to the notice of the concerned authorities. This court has no hesitation in stating that this approach to be deprecated and disapproved. We are governed by the rule of law. The Executive is bound to honour the binding judicial orders. This court is conscious of the realities and also working of the public administration. It may be that all authorities may not be of the same standard hence in the event of doubt better to consult the concerned as referred supra and take appropriate advise and make an order. Regarding the aspect that a particular judgment of High Court was brought to the notice of the authority and despite the same, deliberately and willfully ignoring the same, and making an order, in the considered opinion of this court is nothing short of contempt of court. This court is not inclined to express any further opinion in this regard except making these observations, since this court is disposing of a writ petition and not a contempt proceeding.

11. Let the Assistant City Planner, Circle-III who appeared before this court today, reconsider the issue and pass appropriate orders in accordance with law in the light of the decision of this court referred to supra within one week from the date of receipt of a copy of this order.

12. Accordingly, the writ petition is allowed to the extent indicated above. In the light of the explanation submitted by the concerned officer, which this court takes to be a bonafide explanation, no further costs be imposed.

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P.S.NARAYANA,J

22-08-2006

L.R.copy to be marked.

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[1] 2000 (4) ALD 126 (DB)

[2] 2001 (3) ALD 600